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TARIFF DIVISION

Federal Communications Commission
Office of the Secretary

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Utah)
Public Service Commission) CASE NO. 81-999-08
Regulation of Cable Tele-)
vision Pole Attachment) ORDER DENYING REHEARING
Agreements with Utah Public)
Utilities.)

By the Commission:

On the 23rd of February, 1981, the Commission issued its Order Granting Request for Certification to Federal Communications Commission. Said Order was in tentative form allowing all parties twenty days within which to file objections to such Order. Subsequently, a number of parties (hereafter "Applicants") including Community T.V. of Utah, Inc., Community Television of Utah, Inc., Wasatch Community T.V. Inc., Utah Satellite, Inc., and the Utah Cable Television Operators Association, Inc., filed objections and briefs. On the 15th of May, 1981, the Commission entered its Report and Order making final the earlier Order. Thereafter, the Applicants filed an Application for Rehearing on June 8, 1981, setting forth as grounds for such rehearing that the Commission had exceeded its jurisdiction and authority by asserting control over pole attachment agreements between cable television operators and public utilities and that it could not as a matter of law meet the conditions precedent under 47 U.S.C. Section 224 (c) for the assertion of said jurisdiction and authority.

Being advised in the premises fully and after due consideration, the Commission now makes the following disposition of said Application for Rehearing:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That the Application for Rehearing filed by Applicants on June 8, 1981, be and the same is denied.

mandate that this Commission consider the interests of all classes of interested persons, including utility rate payers and cable television subscribers, most of whom, obviously, will be one and the same.

Accordingly, we conclude that this Commission can unequivocally certify to the FCC, in regard to pole line attachment agreements, that this Commission "...regulates such rates, terms, and conditions; and...in so regulating...the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumer of the utility services." (47 USC Sec. 224(c)) Having so concluded, it follows that the Tentative Order previously entered in this matter should be affirmed and made permanent.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That the Tentative Order entered February 23, 1981, in this matter be, and the same hereby is, affirmed and made permanent.

IT IS FURTHER ORDERED, That upon the expiration of the statutory waiting period for the effectiveness of this Order, the Secretary to the Commission shall forward a certified copy of this Order and the aforesaid Tentative Order to the Secretary, Federal Communications Commission, Washington, D.C. 20554, Attention: Pole Attachments Branch, Common Carrier Bureau.

DATED at Salt Lake City, Utah, this 15th day of May, 1981.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and confirmed this 15th day of May, 1981, as the Report and Order of the Commission.

/s/ Milly O. Bernard, Chairman

(SEAL)

/s/ David R. Irvine, Commissioner

Attest:

/s/ Brent H. Cameron, Commissioner

/s/ David L. Stott, Secretary

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Utah)	
Public Service Commission	)	<u>CASE NO. 81-999-08</u>
Regulation of Cable Tele-)	
vision Pole Attachment	)	<u>REPORT AND ORDER</u>
Agreements with Utah Public)	
Utilities.)	

Appearances:

David Lloyd	For	Utah Power & Light Company, Petitioner
Bryan L. McDougal	"	Utah Cable Television Operators, Inc., Community Television of Utah, Inc., Wasatch Community Television, Inc., Utah Satellite, Inc., Protestants
Robert L. James and Wesley R. Heppler	"	Wentronics, Inc., Protestant
Brenda L. Fox and James H. Ewalt	"	National Cable Television Assoc- iation, Inc., Protestant

By the Commission:

This matter emerged from a controversy brought before the Federal Communications Commission (FCC) involving Petitioner Utah Power & Light Company and Protestant Wentronics, Inc. The controversy involves terms and conditions of a proposed pole line attachment agreement, and Petitioner asked this Commission, pursuant to 47 USC Sec. 224(c), and accompanying regulations, to certify that it regulates such agreements and considers the interests of cable television subscribers, as well as those of public utility rate payers, in so doing. Such certification could, in effect, transfer the FCC proceeding to this Commission.

On February 23, 1981, this Commission entered its Tentative Order effecting certification, and thereafter all the above Protestants entered their appearances and protests. The Division of Public Utilities did not participate in the proceeding. The matter was submitted on the basis of legal memoranda on April 30, 1981, and was assigned to A. Robert Thurman, Administrative Law Judge. Having considered said memoranda, and the points and authorities therein, the Administrative Law Judge now enters the

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POLE ATTACHMENT
OF UTAH

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Utah)	
Public Service Commission)	<u>CASE NO. 81-999-08</u>
Regulation of Cable Tele-)	
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Robert L. James and Wesley R. Heppler	"	Wentronics, Inc., Protestant
Brenda L. Fox and James H. Ewalt	"	National Cable Television Assoc- iation, Inc., Protestant

By the Commission:

This matter emerged from a controversy brought before the Federal Communications Commission (FCC) involving Petitioner Utah Power & Light Company and Protestant Wentronics, Inc. The controversy involves terms and conditions of a proposed pole line attachment agreement, and Petitioner asked this Commission, pursuant to 47 USC Sec. 224(c), and accompanying regulations, to certify that it regulates such agreements and considers the interests of cable television subscribers, as well as those of public utility rate payers, in so doing. Such certification could, in effect, transfer the FCC proceeding to this Commission.

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following Report and Order containing recommended Conclusions of Law and the Order based thereon.

CONCLUSIONS OF LAW

Protestants argued strongly, and adduced a good deal of authority for the proposition, that this Commission has no authority to regulate cable television operators as public utilities. General regulation, however, is not the issue before us. Nevertheless, from this premise Protestants argue that taking jurisdiction of pole line attachment agreements would partake of utility regulation, and hence, so far as this Commission is concerned, would be ultra vires.

If this Commission had only a general grant of authority, such as, for example, that involved in Teleprompter Corporation, et al., v. Paula F. Hawkins, et al., 384 So.2d 648 (Fla. 1980), Protestants' argument might have some force. However, such argument completely ignores Section 54-4-13, Utah Code Ann. 1953, subparagraph 2(b) of which empowers this Commission to determine that the use of a utility's easement by the cable television operator, under the attachment agreement, "will not interfere with the primary utility function or render its facilities unsafe, and that the contract is in the public interest." (Emphasis added.)

Protestant Wentronics, Inc., argues that the quoted language is only part of a five-prong test to determine whether the public interest is served by allowing the cable system to remain on the utility's poles. Precisely. But what is encompassed within the phrase "public interest?" It obviously goes beyond determining physical compatibility, since that is set out in a separate phrase. Notice also that it is the "contract" which must be determined to be in the public interest.

We conclude that if the phrase is to have any meaning at all, it must accord this Commission authority over the rates, terms and conditions of pole line attachment agreements, and it must

mandate that this Commission consider the interests of all classes of interested persons, including utility rate payers and cable television subscribers, most of whom, obviously, will be one and the same.

Accordingly, we conclude that this Commission can unequivocally certify to the FCC, in regard to pole line attachment agreements, that this Commission "...regulates such rates, terms, and conditions; and...in so regulating...the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumer of the utility services." (47 USC Sec. 224(c)) Having so concluded, it follows that the Tentative Order previously entered in this matter should be affirmed and made permanent.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That the Tentative Order entered February 23, 1981, in this matter be, and the same hereby is, affirmed and made permanent.

IT IS FURTHER ORDERED, That upon the expiration of the statutory waiting period for the effectiveness of this Order, the Secretary to the Commission shall forward a certified copy of this Order and the aforesaid Tentative Order to the Secretary, Federal Communications Commission, Washington, D.C. 20554, Attention: Pole Attachments Branch, Common Carrier Bureau.

DATED at Salt Lake City, Utah, this 15th day of May, 1981.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and confirmed this 15th day of May, 1981, as the Report and Order of the Commission.

/s/ Milly O. Bernard, Chairman

(SEAL)

/s/ David R. Irvine, Commissioner

Attest:

/s/ Brent H. Cameron, Commissioner

/s/ David L. Stott, Secretary

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

POLE ATTACHMENT
BRANCH

In the Matter of:)
WENTRONICS, INC.) File No. PA-81-0013
Complainant,)
vs.)
UTAH POWER & LIGHT COMPANY)
Respondent,)
TO: The Common Carrier Bureau

NOTICE OF ACTION BY
UTAH PUBLIC SERVICE COMMISSION

Respondent respectfully notifies the Commission that the Utah Public Service Commission has adopted the attached order which, while final, is appealable. Said order has a direct bearing on the within matter in that the Utah Public Service Commission has adopted the tentative order previously submitted to the Commission in the within matter which certifies to the Commission, pursuant to 47 U.S.C. § 224(c) that the Utah Commission regulates pole attachment agreements, and considers the interests of cable television subscribers as well as those of the public

utility ratepayer. Accordingly, pending the running of any appeal time, or pending an appeal of the decision of the Utah Public Service Commission to the Utah Supreme Court, Respondent requests that the Commission stay any further proceedings in this matter pending such final determinations.

DATED this 18th day of May, 1981.

Respectfully submitted,

ROBERT GORDON
DAVID LLOYD

By 

Attorneys for Utah Power & Light Company
P.O. Box 899
1407 West North Temple, Suite 338
Salt Lake City, Utah 84110
Telephone: 801-535-2885

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of the within Notice to the following counsel of record postage prepaid this 18th day of May, 1981.

Mr. Robert L. James
Mr. Wesley R. Heppler
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Ave., N.W., Suite 200
Washington, D.C. 20006


David Lloyd

→ Bert Wemtrant
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TARIFF DIVISION

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JUN 22 1981

POLE ATTACHMENT
DIVISION

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Utah)	
Public Service Commission	)	CASE NO. 81-999-08
Regulation of Cable Tele-)	
vision Pole Attachment	)	<u>ORDER DENYING REHEARING</u>
Agreements with Utah Public)	
Utilities.)	

By the Commission:

On the 23rd of February, 1981, the Commission issued its Order Granting Request for Certification to Federal Communications Commission. Said Order was in tentative form allowing all parties twenty days within which to file objections to such Order. Subsequently, a number of parties (hereafter "Applicants") including Community T.V. of Utah, Inc., Community Television of Utah, Inc., Wasatch Community T.V. Inc., Utah Satellite, Inc., and the Utah Cable Television Operators Association, Inc., filed objections and briefs. On the 15th of May, 1981, the Commission entered its Report and Order making final the earlier Order. Thereafter, the Applicants filed an Application for Rehearing on June 8, 1981, setting forth as grounds for such rehearing that the Commission had exceeded its jurisdiction and authority by asserting control over pole attachment agreements between cable television operators and public utilities and that it could not as a matter of law meet the conditions precedent under 47 U.S.C. Section 224 (c) for the assertion of said jurisdiction and authority.

Being advised in the premises fully and after due consideration, the Commission now makes the following disposition of said Application for Rehearing:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That the Application for Rehearing filed by Applicants on June 8, 1981, be and the same is denied.

CASE NO. 81-999-08

-2-

DATED at Salt Lake City, Utah, this 16th day of June, 1981.

/s/ Milly O. Bernard, Chairman

(SEAL)

/s/ David R. Irvine, Commissioner

/s/ Brent H. Cameron, Commissioner

Attest:

/s/ David L. Stott, Secretary

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MAR 13 1981

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

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MAR 13 1981

In the Matter of:)	POLE ATTACHMENT
WENTRONICS, INC.,)	BRANCH
Complainant,)	File No. PA-81-0013
vs.)	
UTAH POWER & LIGHT COMPANY,)	
Respondent.)	

TO: The Common Carrier Bureau

RESPONSE TO REPLY

Complainant Wentronics, Inc., has submitted a Reply to the Answer previously filed by Utah Power & Light Company which contains a substantial misstatement of fact regarding the issue of State of Utah certification to the Commission pursuant to 47 C.F.R. § 1.1414 (1979). Copies of Utah Power & Light Company's petition for certification were mailed to counsel for complainant Wentronics, Inc., and said counsel contacted Commissioner Cameron of the Utah Public Service Commission regarding the Commission's position on the Utah Power & Light Company petition. Said counsel was informed

that it was the Commission's position to assert its jurisdiction where granted or mandated by statute. Shortly thereafter, the Utah Public Service Commission issued the attached order, copies of which have previously been mailed by the Commission and by respondent to all interested parties in this matter.

Accordingly, the allegation on the part of complainant that "the possibility that the Utah Public Service Commission may sometime in the future certify" was inappropriately made and was contrary to information presently available to complainant. Further, it would seem inappropriate to continue further in this matter on the present record without giving the Utah Public Service Commission sufficient time to act in this matter as provided in its order. Respondent has stated in its previous pleadings that it desires to submit full and accurate rate information at such time as the Commission shall determine the preliminary question of which authority has jurisdiction. Preparation of the type of material required in these matters constitutes a significant burden to respondent as its rate information has been prepared for the use of the three separate regulatory commissions of Utah, Idaho and Wyoming in data format which is different than that requested in this matter.

DATED February 28, 1981.

ROBERT GORDON
DAVID LLOYD



Attorneys for Respondent
1407 West North Temple, Suite 338
Salt Lake City, Utah 84116
Telephone: 801-535-2885

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

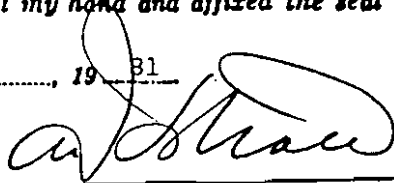
STATE OF UTAH
County of Salt Lake

ss.

I hereby certify that the foregoing consisting of Two pages numbered 1 to 2 inclusive, is a true and correct copy of the original ORDER GRANTING REQUEST FOR CERTIFICATION TO FEDERAL COMMUNICATIONS COMMISSION, Case No. 81-999-08, In the Matter of the Utah Public Service Commission's regulation of cable television pole attachment agreements with Utah public utilities in the foregoing entitled matter or cause, now of record or on file in the office of the Public Service Commission of Utah.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Commission this

23rd day of February, 1981



Secretary of said Commission.

cable television services within the State of Utah, as well as the interests of the consumers of and investors in the public utilities party to such pole attachment agreements within the State of Utah.

3. That a copy of this Order be published by Petitioner in a newspaper of general circulation within the State of Utah for at least two successive issues, with proof of publication thereof to be filed with this Commission within 15 days of the first day of publication. Unless meritorious protest is filed with the Commission within 20 days of the date of first publication thereof, this Order shall thereupon become the Final Order of the Commission, and shall be effective upon the expiration of said 20 day period. In the event that such protest is filed, the Commission may, in its discretion, set the matter for hearing or further consideration. Upon this Order becoming final, the Secretary shall forward a certified copy of this Order to the Secretary, Federal Communications Commission, Washington, D.C. 20554, Attention: Pole Attachments Branch, Common Carrier Branch.

DATED at Salt Lake City, Utah, this 23rd day of February, 1981.

/s/ Milly O. Bernard, Chairman

(SEAL)

/s/ David R. Irvine, Commissioner

/s/ Brent H. Cameron, Commissioner

Attest:

/s/ David L. Stott, Secretary

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Utah)	
Public Service Commission's	)	CASE NO. 81-999-08
regulation of cable television))	
pole attachment agreements	)	ORDER GRANTING REQUEST
with Utah public utilities.	)	FOR CERTIFICATION TO
	)	FEDERAL COMMUNICATIONS
	)	COMMISSION

By the Commission:

Utah Power & Light Company (UP&L) has petitioned this Commission for an order certifying to the Federal Communications Commission pursuant to 47 C.F.R. Section 1.1414 (1979), that this Commission is required by law to regulate rates, terms and conditions for cable television pole attachment agreements and that in so regulating such rates, terms and conditions has the authority to consider, and will consider, the interests of cable television pole subscribers as well as the interests of consumers and investors in public utilities within Utah. UP&L represents by its Petition that an action entitled *Wentronics, Inc. v. Utah Power & Light Company*, File No. PA-81-0013 has been filed with the Federal Communications Commission before the Common Carrier Bureau alleging lack of such regulation by any agency of the State of Utah. It is, therefore, appropriate that the Commission consider the requested certification at this time and finding that it has the authority to and does in fact exercise the aforementioned regulation makes the following Order.

ORDER

1. That the Commission as evidenced by Orders previously issued and by virtue of Utah Code Annotated, Section 54-4-13 (1953) regulates rates, terms and conditions for pole attachment agreements affecting utility poles maintained by regulated public utilities within the State of Utah, including petitioner, Utah Power & Light Company.

2. In so regulating, the Commission has the authority to consider, and will consider, the interests of the subscribers of

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

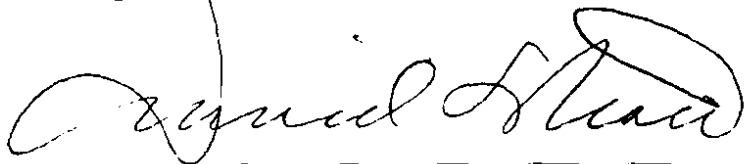
In the Matter of the Utah)	
Public Service Commission's	)	<u>CASE NO. 81-999-08</u>
regulation of cable tele-)	
vision pole attachment	)	<u>NOTICE OF SUBMISSION</u>
agreements with Utah public)	
utilities.)	

Notice is hereby given that the issue of the Commission's certification to the Federal Communications Commission dated February 23, 1980 has been submitted on briefs for the Commission's consideration and action and; thus, no oral arguments on the matter will be scheduled.

Any party or amicus curiae wishing to submit a brief or supplementary material should do so within ten (10) day of the issuance hereof.

By Order of the Commission.

DATED at Salt Lake City, Utah, this 20th day of April, 1981.



David L. Stott, Secretary

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POLE ATTACHMENT
BRANCH

RECEIVED BY FCC
MAR 13 1981

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

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In the Matter of:)	POLE ATTACHMENT
WENTRONICS, INC.,)	BRANCH
Complainant,)	File No. PA-81-0013
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TO: The Common Carrier Bureau

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that it was the Commission's position to assert its jurisdiction where granted or mandated by statute. Shortly thereafter, the Utah Public Service Commission issued the attached order, copies of which have previously been mailed by the Commission and by respondent to all interested parties in this matter.

Accordingly, the allegation on the part of complainant that "the possibility that the Utah Public Service Commission may sometime in the future certify" was inappropriately made and was contrary to information presently available to complainant. Further, it would seem inappropriate to continue further in this matter on the present record without giving the Utah Public Service Commission sufficient time to act in this matter as provided in its order. Respondent has stated in its previous pleadings that it desires to submit full and accurate rate information at such time as the Commission shall determine the preliminary question of which authority has jurisdiction. Preparation of the type of material required in these matters constitutes a significant burden to respondent as its rate information has been prepared for the use of the three separate regulatory commissions of Utah, Idaho and Wyoming in data format which is different than that requested in this matter.

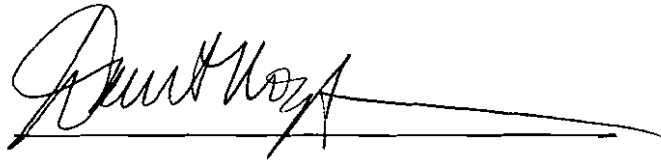
DATED February 28, 1981.

ROBERT GORDON
DAVID LLOYD


Attorneys for Respondent
1407 West North Temple, Suite 338
Salt Lake City, Utah 84116
Telephone: 801-535-2885

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the within Response and attachment, postage prepaid by U.S. Mails this 28th day of February, 1981, to Mr. Wesley R. Heppler, attorney for complainant, Suite 200, 1919 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

A handwritten signature in cursive script, appearing to read "Paul Hays", is written over a horizontal line.